

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

SB 478 (Dodd) – As Amended May 18, 2023

SENATE VOTE: 31-3

SUBJECT: Consumers Legal Remedies Act: advertisements

SYNOPSIS

In 2018, at least 85 percent of Americans surveyed by Consumer Reports reported encountering an unexpected fee or surprise charge over the previous two years. The same survey found that a majority of the respondents reported spending more than they budgeted due to these hidden costs in transactions for hotels, air travel, car rentals, telecom, or tickets for live events. President Biden has made diminishing or eliminating these fees—which he terms “junk fees”—a centerpiece of his economic agenda.

This bill proposes to combat junk fees by making it explicitly unlawful, under the state’s Consumers Legal Remedies Act, to advertise, display, or offer a price for a good or service unless that price includes all mandatory fees or charges. By making this practice illegal, the bill would seek to bring price transparency to all sectors of the state’s economy simultaneously, rather than through piecemeal litigation or lawmaking.

This analysis addresses the following questions:

- 1) What types of fees would this bill cover?*
- 2) How will this bill be enforced?*
- 3) What benefits does this bill promise?*
- 4) How does this bill fit with President Biden’s competition agenda?*
- 5) Given that much of the conduct that this bill would prohibit is illegal under existing law, why is this bill necessary?*

This bill is co-sponsored by California Attorney General Rob Bonta and the California Low-Income Consumer Coalition, a group of nonprofits that provide free legal services to the indigent. It is supported by the California District Attorneys Association and various consumer groups. It is opposed by a number of business associations, including the California Chamber of Commerce, Civil Justice Association of California, and Travel Technology Association. That said, Committee amendments, set forth below, will remove the opposition of a number of business groups if adopted.

This bill was previously heard by the Assembly Judiciary Committee, where it passed on an 8-3-0 vote.

SUMMARY: Makes it an unlawful business practice under the Consumers Legal Remedies Act to advertise, display, or offer a price for a good or service that does not include all mandatory fees or charges, other than government-imposed taxes or fees. Specifically, **this bill:**

- 1) Makes the following uncodified findings and declarations:

- a) This act is intended to specifically prohibit drip pricing, which involves advertising a price that is less than the actual price that a consumer will have to pay for a good or service.
 - b) This practice, like other forms of bait and switch advertising, is prohibited by existing statutes, including the Unfair Competition Law and the False Advertising Law, both codified in the Business and Professions Code.
- 2) Adds the following to the methods of competition and acts or practices declared unlawful under the Consumers Legal Remedies Act (CLRA): advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges other than taxes or fees imposed by a government on the transaction.
 - 3) Clarifies that a person that provides broadband internet access service, whether on its own or as part of a bundle, and is in compliance with certain federal broadband consumer labelling requirements, is deemed to be in compliance with this bill.
 - 4) Establishes that a holder of a vehicle dealer's license does not violate 2) for excluding from the advertised, displayed, or offered price of a vehicle certain fees and costs that it is permitted to omit from the advertised price of a vehicle, including vehicle registration fees and dealer document processing charges.

EXISTING LAW:

- 1) Establishes the Unfair Competition Law (UCL), which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Business and Professions Code §§ 17200-17210.)
- 2) Establishes the False Advertising Law (FAL), which proscribes making or disseminating any statement that is known or should be known to be untrue or misleading with the intent to directly or indirectly dispose of real or personal property. (Business and Professions Code Section 17500-17606.)
- 3) Establishes the CLRA, which prohibits certain enumerated unfair methods of competition, and unfair or deceptive acts or practices, in connection with a transaction intended to result, or that does result, in the sale or lease of goods or services. (Civil Code §§ 1750-1784.)
- 4) Defines the following terms under the CLRA:
 - a) "Goods" means tangible chattels bought or leased for use primarily for personal, family, or household purposes. (Civ. Code § 1761(a).)
 - b) "Services" means work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods. (Civ. Code § 1761(b).)
- 5) Provides that the CLRA's underlying purposes are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection. (Civ. Code § 1760.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS:

1) **Background.** It has become uncomfortably common to encounter unexpected or unexplained fees while shopping. You carefully select tickets to a concert or a sporting event, ones that allow you and your friends to sit together; then a “service charge” is displayed on the payment page, blowing the group’s budget. You check out of a hotel and find a non-negotiable “destination fee” added to the bill. You change cell phone providers on the promise of lower monthly bills; after paying a “termination fee” to your old provider, you find that various line-item charges on your bill make your new plan more expensive than the old one, and no customer service representative can explain what they cover. You see someone at a convenience store being assessed an extra charge because they can only pay their utility bills in cash.

Different terms have been developed to describe these fees and charges, including “hidden fees,” “drip pricing,” “surprise charges,” and “undisclosed fees.” This analysis will use President Biden’s preferred term: “junk fees.” The President has made the diminishment or elimination of junk fees a centerpiece of his economic agenda. As explained on the White House website:

There is nothing wrong with a firm charging reasonable add-on fees for additional products or services. In the interests of customization, firms should be free to charge more to add mushrooms to your pizza or to upgrade you to a hotel room with an ocean view. However, in recent years we’ve seen a proliferation of “junk fees”—a category of fees that serve a different purpose. They can be defined as fees designed either to confuse or deceive consumers or to take advantage of lock-in or other forms of situational market power. (Deese, et al., *The President’s Initiative on Junk Fees and Related Pricing Practices*, The White House (Oct. 26, 2022), available at <https://www.whitehouse.gov/briefing-room/blog/2022/10/26/the-presidents-initiative-on-junk-fees-and-related-pricing-practices/>.)

The Federal Trade Commission elaborates:

Junk fees not only are widespread but also are growing. In various industries, fees are increasing at higher rates than the base prices of the goods or services to which they are added. For example, in higher education and hospitality, fees are increasing faster than tuition or posted room rates. After first emerging in the late 1990s, hotel “resort fees” accounted for \$2 billion, or one-sixth of total hotel revenue, by 2015. With rising prices, fees are becoming more prevalent, allowing some businesses to raise effective prices without appearing to do so. (Federal Register, *Unfair or Deceptive Fees*, Trade Regulation Rule Commission Matter No. R207011, Federal Trade Commission (Nov. 8, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-11-08/pdf/2022-24326.pdf>.)

However profitable junk fees may be for businesses—and data suggests they may be very profitable—they are also largely illegal; their use often constitutes an unfair or deceptive act or practice. The problem is that there is not a specific statute outlawing junk fees. Instead, the illegality of particular junk fees must be demonstrated on a case-by-case basis, using statutes, such as California’s Unfair Competition Law and False Advertising Law, that target unfair and deceptive practices generally; or by using specific statutes that address particular transactions, such as disclosure of rental car fees. Neither approach adequately addresses the *systemic* nature of junk fees.

In response, this bill would explicitly make it illegal to advertise, display, or offer a price for a good or service unless that price includes all mandatory fees or charges. By making this practice illegal throughout California, the bill would seek to bring price transparency to all sectors of the state's economy simultaneously, rather than through piecemeal litigation or lawmaking.

2) **Author's statement.** According to the author:

SB 478 combats the deceptive price advertising practice in which a seller uses an artificially low headline price to attract a customer and usually either discloses additional required fees in smaller print, or reveals additional charges later in the buying process.

Deceptive price advertising to hide fees is a significant problem facing consumers that appears to be proliferating in more and more sectors of the economy. Hiding required fees is nothing more than a deceptive way of hiding the true price of a good or service. Transparency and full disclosure in pricing are crucial for fair competition and consumer protection. Unfortunately, more and more businesses today are hiding unavoidable charges from consumers. [...]

[SB] 478 would prohibit the deceptive price advertising practice of hiding unavoidable fees, and instead require honest price advertising and full disclosure in pricing across the board for the protection of California consumers and businesses who are up-front about their prices. Specifically, SB 478 would make it clear that it is unlawful under the Consumer Legal Remedies Act (CLRA) to advertise a price for a good or service that does not include all required fees or charges other than taxes or fees imposed by a government on the transaction.

3) **What types of fees would this bill cover?** This bill would require that the price shown for a good or service in any advertisement, display, or offer include all *mandatory* fees and charges—i.e., those that a customer is required by the merchant to pay as part of the transaction. *Optional* fees and charges, such as for premium movie channels in one's cable TV subscription, or for gift-wrapping an online purchase, would not have to be included. (Government-imposed taxes and fees could also be omitted.)

4) **How would this bill be enforced?** This bill would make a failure to include the total price an unlawful business practice under the Consumers Legal Remedies Act (CLRA). Specifically, the bill would amend Civ. Code § 1770(a) to prohibit “advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges other than taxes or fees imposed by a government on the transaction.”

The CLRA prohibits “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer,” (Civ. Code § 1770(a)), and prohibits conduct “likely to mislead a reasonable consumer.” (*Colgan v. Leatherman Tool Grp., Inc.* (2006) 135 Cal. App. 4th 663, 680; internal quotation marks omitted.) The CLRA was enacted “to protect the statute's beneficiaries from deceptive and unfair business practices,” and to provide aggrieved consumers with “strong remedial provisions for violations of the statute.” (*Am. Online, Inc. v. Superior Court* (2001) 90 Cal. App. 4th 1, 11.) It can be enforced both by public prosecutors, such as the Attorney General, and by private attorneys. (Civ. Code § 1780.)

5) **What benefits does this bill promise?** Requiring upfront disclosure of all mandatory fees and charges is anticipated to yield the following benefits for consumers, businesses, and the state's economy:

- Enabling direct, apples-to-apples price comparison, so that consumers can make informed purchasing decisions based on their preferences and budgets.
- Limiting the time consumers waste shopping for a product or service that may, once junk fees are assessed, become excessively expensive or unaffordable.
- Ensuring that businesses compete on the basis of price and value offered, rather than on their ability to deceive consumers into paying junk fees.
- Protecting businesses that choose to be transparent about pricing, so that they are not at a competitive disadvantage relative to businesses that exploit junk fees for profit.
- Reducing the overall use of junk fees throughout California's economy.

As summarized by Attorney General Bonta in his sponsor letter:

Working families are dealing with enough in life—they shouldn't have to waste their time trying to figure out what goods and services will really cost them and which advertised prices are false. Simply put, the advertised price should be the price Californians pay. When pricing is not transparent, it alters the fair balance of information that is vital for a free market economy to operate. Lack of pricing transparency not only hurts competition and honest businesses, but also hurts consumers.

6) **How does this bill fit with President Biden's competition agenda?** President Biden has made reducing or eliminating junk fees a centerpiece of his efforts to increase competition in the economy. On July 9, 2021, the President signed an executive order designed to promote competition, with the intention of lowering prices, increasing wages, and promoting innovation and faster economic growth. According to the White House, higher prices and lower wages caused by a lack of competition are estimated to cost the median household \$5,000 per year. (The White House, *Executive Order on Promoting Competition in the American Economy* (Jul. 9, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.)

A number of the provisions in the executive order are targeted at junk fees, including “[saving] Americans money on their internet bills by banning excessive early termination fees [and] requiring clear disclosure of plan costs to facilitate comparison shopping,” “[making] it easier for people to get refunds from airlines and to comparison shop for flights by requiring clear upfront disclosure of add-on fees,” and “[directing the Department of Transportation] to consider issuing rules that require baggage, change, and cancellation fees to be clearly disclosed to the customer.” (The White House, *Fact Sheet: Executive Order on Promoting Competition in the American Economy* (Jul. 9, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>.) The executive order also established a White House Competition Council “to monitor progress on finalizing the initiatives in the [executive order.]” (*Ibid.*)

On September 26, 2022, President Biden spoke at the third meeting of the Competition Council. The transcript of his live remarks include the following:

And what we're talking about today is something that's weighing down family budgets: unnecessary hidden fees...known in the parlance as "junk fees," are hitting families at a time when they can't afford it. They shouldn't be paying it anyway, in my view—but at a time when they can't afford it.

And let me give you an example. It hits middle- and working-class families especially hard. Things like...the huge termination fees where they're going to stop you from switching from a cellphone...to another provider.

Well, guess what? There's an incredible fee you have to pay...you got to pay a fee to go to somebody else for a better deal.

This council is going to come back to me—"God willing and the crick not rising," as the old saying goes—with a plan for eliminating and reducing fees.

Families shouldn't have to pay these fees. No [more] sneaking surprise charges into bills, like finding out you have to pay a \$50 processing fee for a hotel room that you're trying to book—a processing fee. You find out later. [N]o more hiding the price that you — that you're paying and not letting you know what the hidden fees are. (*Remarks by President Biden at the Third Meeting of the White House Competition Council* (Sep. 26, 2022), available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/09/26/remarks-by-president-biden-at-the-third-meeting-of-the-white-house-competition-council/>.)

In his February 2023 State of the Union address, the President once again took aim at junk fees:

Junk fees may not matter to the very wealthy, but they matter to most folks in homes like the one I grew up in. They add up to hundreds of dollars a month. They make it harder for you to pay the bills or afford that family trip. [...] **Americans are tired of being played for suckers.** (The White House, *Remarks of President Joe Biden – State of the Union Address as Prepared for Delivery* (Feb. 7, 2023), available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/02/07/remarks-of-president-joe-biden-state-of-the-union-address-as-prepared-for-delivery/>.)

In February, President Biden also proposed legislation, the Junk Fee Protection Act, that would specifically reduce four types of junk fees:

1. Excessive online concert, sporting event and other entertainment ticket fees.
2. Airline fees for family members to sit with young children.
3. Early termination fees for television, phone, and internet services.
4. Surprise resort and destination fees.

(The White House, *Fact Sheet: President Biden Highlights New Progress on His Competition Agenda* (Feb. 1, 2023), available at <https://www.whitehouse.gov/briefing->

[room/statements-releases/2023/02/01/fact-sheet-president-biden-highlights-new-progress-on-his-competition-agenda/.](https://www.senate.ca.gov/room/statements-releases/2023/02/01/fact-sheet-president-biden-highlights-new-progress-on-his-competition-agenda/))

Versions of the bill have been introduced in both houses of Congress, as H.R. 2463 (Gallego) and S.916 (Blumenthal); neither appears to have advanced out of its house of origin.

A bill opponent, Expedia Group, argues that these federal efforts suffice:

As you know, President Biden and others at the federal level are actively pursuing the issue of price transparency for consumers, including in the travel sector. While we applaud state legislators for their interest in ensuring a fair and transparent experience for consumers, a state-level approach risks creating an unworkable patchwork of differing standards across states. This is not only burdensome for platforms, but more importantly would create a confusing and challenging environment for consumers who, rather than being able to rely on a single standard for price transparency, may encounter differing models based on their location of origin or destination.

This is a puzzling argument. The bill simply requires upfront price transparency within the state, i.e., the place where most Californians spend most of their time. The benefits of having this information in California ought to greatly outweigh any confusion they experience if they continue to encounter junk fees when traveling out of state. Moreover, if California's efforts are mirrored at the federal level, so much the better for consumers in other parts of the country—but it will not change the transparency that Californians would enjoy as a result of this bill. Attorney General Bonta, a co-sponsor of this bill, adds:

Here in California, we need not wait for federal action. [...Now] is the time to pass a state law that recognizes that the practice of hiding required fees is deceptive and unfair to consumers wherever it occurs—not just in certain industries. Accordingly, SB 478 would prohibit this deceptive advertising practice across the board in California, and allow broad civil enforcement of violations under the CLRA.

7) Given that much of the conduct that this bill would prohibit is illegal under existing law, why is this bill necessary? A coalition of 13 business groups, including the California Chamber of Commerce and TechNet argue that this bill is unnecessary, writing:

California already has a law that allows both public attorneys or private individuals to sue businesses who utilize false advertising – Business & Professions Code § 17500, also known as the False Advertising Law (FAL). To state a claim for false advertising under the FAL, the plaintiff must show that (1) the statements in the advertising are untrue or misleading and (2) the defendants knew, or by the exercise of reasonable care should have known, that the statements were untrue or misleading. To be clear, a blatant lie is not necessary to hold an advertiser liable under the FAL. “To succeed on the merits of a false advertising claim, the plaintiff need only show that members of the public are likely to be deceived.” *Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995). As noted above, the FAL can be enforced by a range of public sector attorneys...or by members of the public on their own behalf. [citation omitted.] In short: for situations where an advertisement misstates a price for any good or service by failing to include mandatory fees or misleading a consumer, an action under the FAL could already be brought by either public prosecutors or private counsel. [...]

We are not opposed to legal consequences for businesses who attempt to trick consumers with unclear pricing. However, SB 478 would create a new, more onerous private right of action by placing new enforcement language into the Consumer Legal Remedies Act (CLRA, Civil Code 1770 et seq.) that is not necessary given the already-existing enforcement authority related to false or misleading advertising, discussed above.

The author acknowledges the opposition's point about FAL enforcement, and adds that the practices prohibited by this bill also violate the Unfair Competition Law (UCL), Bus. & Prof. Code § 17200:

Existing law requires that advertising be truthful and not misleading, including with respect to all advertised prices. Because the use of deceptive price advertising that hides charges from consumers by definition involves falsely advertising the price of the good or service, the practice violates the False Advertising Law [and the] Unfair Competition Law.... These laws...are intended to reach a broad range of conduct because it would have been impossible for the Legislature to predict and to prohibit every type of false and misleading advertising.

So why is this bill necessary?

What makes the CLRA effective is its enumeration of very specific acts that constitute violations. For example:

- Passing off goods or services as those of another. (Civ. Code § 1770(a)(1).)
- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have. (Civ. Code § 1770(a)(5).)
- Representing that a part, replacement, or repair service is needed when it is not. (Civ. Code § 1770(a)(15).)
- Advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements without including a specific disclosure about the presenter's (lack of) authority to file for benefits on a person's behalf. (Civ. Code § 1770(a)(25).)

There are currently 28 such prohibitions codified under the CLRA. Each of these practices is also unlawful under the FAL and/or the UCL. But specifically codifying them in the CLRA has made it clear to all economic actors that these practices are unlawful and must cease, and that lawbreakers will be held liable.

Experience has shown that codification under the CLRA is effective at ending the identified unlawful business practices. For example, SB 320 (Petris, Chap. 255, Stats. 1995) enacted paragraph (23) under the CLRA, which made it unlawful to conduct door-to-door solicitations of senior citizens for home improvements, if these improvements are to be financed with loans secured by the senior citizens' homes. There was an epidemic of such solicitations in the early 1990s; many older Californians were foreclosed on because the loans included undisclosed balloon payments that seniors on fixed incomes could not afford. Prohibiting this very specific act in the CLRA was, by all accounts, successful at curbing this problem—despite the fact that these acts were already illegal under the FAL and/or the UCL. It is hoped that this bill's

codification of fee transparency—as paragraph (29) under the CLRA—will be similarly effective at curbing the use of junk fees.

Both the FAL and the CLRA offer private rights of action. In terms of monetary remedies, both the FAL and the CLRA provide for restitution, while the CLRA also allows consumers to obtain actual damages. (Bus. and Prof. Code § 17535; Civ. Code § 1780.) However, in a case involving deceptive price advertising, such as this bill would prohibit, the amount of any restitution award would likely be the same as the amount of damages: in either case, the amount lost by the plaintiff due to the defendant’s failure to disclose junk fees. As a further safeguard, the CLRA imposes stringent requirements to seek class relief for violations, requirements that are in many ways more stringent than those under the FAL, such as the notices required to be given to potential CLRA class members. (Civ. Code § 1781.)

8) **Committee amendment—shipping cost disclosures.** As currently in print, the bill would arguably require upfront disclosure of shipping costs associated with online or catalog purchases. But, of course, the cost of shipping depends on factors such as the address to which an item is being sent and whether it will be delivered overnight. The following amendment is meant to ensure accurate disclosure of shipping charges:

Civil Code 1770. (a) The unfair methods of competition and unfair or deceptive acts or practices listed in this subdivision undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer are unlawful:

[...]

(29) (A) Advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges other than (i) taxes or fees imposed by a government on the transaction; *or (ii) postage or carriage charges that will be reasonably and actually incurred to ship the physical good to the consumer.*

The qualifier “will be reasonably and actually incurred” is critical to the functioning of this amendment. It is meant to ensure that later-disclosed shipping charges reflect the actual cost of shipping the product. Without this qualifier, this exemption might open a loophole for new junk fees. An online retailer might lure a shopper in (particularly if the shopper relies on third-party websites allowing price comparison) by showing a product at a price much lower than any of its competitors, and then, just before payment, display an inflated shipping charge that brings the total cost to buy the product in line with the retailer’s competitors. This would be a new form of junk fee, but because of the phrase “will be reasonably and actually incurred,” this practice would be prohibited under this amendment.

With this amendment, the California Retailers Association has agreed to take a neutral position on the bill.

9) **Committee amendment—financial transaction disclosures.** The following amendment is meant to ensure that regulated financial entities, such as banks and credit unions, are exempt from the bill if they are advertising, displaying, or offering prices in connection with a financial transaction, if that financial transaction is already subject to state or federal disclosure laws.

Civil Code 1770. (a) The unfair methods of competition and unfair or deceptive acts or practices listed in this subdivision undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer are unlawful:

[...]

(29) (A) Advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges other than taxes or fees imposed by a government on the transaction.

[...]

(C) (1) “Financial entity” means an entity exempt from Division 24 (commencing with Section 90000) of the Financial Code pursuant to Section 90002 of the Financial Code.

(2) A financial entity that is required to provide disclosures in compliance with any of the following federal or state acts or regulations with respect to a financial transaction is exempt from this paragraph for purposes of that financial transaction:

(i) The federal Truth in Savings Act, as amended (12 U.S.C. Sec. 4301, et seq.).

(ii) The federal Electronic Fund Transfer Act, as amended (15 U.S.C. Sec. 1693, et seq.).

(iii) Section 19 of the Federal Reserve Act, as amended (12 U.S.C. Sec. 461, et seq.).

(iv) The federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601, et seq.).

(v) The federal Real Estate Settlement Procedures Act, as amended (12 U.S.C. Sec. 2601, et seq.).

(vi) The federal Home Ownership Equity Protection Act (15 U.S.C. Sec. 1639).

(vii) Any regulation promulgated under any of the federal acts in subdivision (i) through (vi).

(viii) California Financing Law under Division 9 (commencing with Section 22000) of the Financial Code.

(ix) California Residential Mortgage Lending Act under Division 20 (commencing with Section 50000) of the Financial Code.

(x) Real Estate Law under Division 4 (commencing with Section 10000) of the Business and Professions Code.

(xi) Any regulation promulgated under the state acts in subdivision (viii), (ix) and (x).

The key phrase in this amendment, one that is intended to prevent loopholes, is “for purposes of that financial transaction.” A bank that chose to advertise or display a price for a novel, unregulated financial product would still be subject to this bill, and could not try to disguise the fees involved. Similarly, if a credit union were to offer its members discounts on vacation packages, it would have to display all of the fees when making that offer.

With this amendment, the following entities have agreed to take a neutral position on the bill: California Bankers Association, California Credit Union League, California Financial Services Association, California Mortgage Association, and California Mortgage Bankers Association.

10) **Committee amendment—rental car fee disclosures.** Civil Code sections 1939.01 – 1939.37 set forth a comprehensive legal framework regulating vehicle rentals in California. Section 1939.19 is a particularly important section for purposes of this bill. It requires rental car companies to, at the time a price quote is given to a customer, disclose the rental rate, additional mandatory charges (some of which apply only to airport rentals, such as airport concession fees and customer facility charges; others which apply more generally, such as tourism commission assessments and vehicle license recovery fees), and any mileage charges. (Civ. Code § 1939.19(a), (b).) Definitions of these terms may be found at Civ. Code § 1939.01. Section 1939.19 also requires all rate advertisements to include a prominently-displayed disclaimer “providing that additional mandatory charges may be imposed, including, but not limited to, airport fees, tourism fees, vehicle license recovery fees, or other government imposed taxes or fees, and indicating that this information, including an estimate of the total rental cost, is displayed on the rental company’s internet website.” (Civ. Code § 1939.19(g).) Advertisements must also include a “statement that additional charges may apply if an optional good or service, such as a damage waiver, is purchased.” (*Ibid.*)

The following amendment would exempt all of these fees, which are already governed by these rather specific disclosure requirements, from the bill:

Civil Code 1939.20. *A rental company is not in violation of paragraph (29) of subdivision (a) of Section 1770 of the Civil Code for excluding from the advertised, displayed, or offered price of a rental vehicle charges that are disclosed to the consumer in compliance with subdivisions (a), (b), and (g) of Section 1939.19.*

With this amendment, the American Car Rental Association, consisting of more than 300 car rental companies, including Alamo, Avis, Budget, Dollar, Enterprise, Fox, Hertz, National, Sixt and Thrifty, has agreed to take a neutral position on the bill.

11) **Committee amendment—mandated travel- and tourism-related assessment disclosures.** The following amendments clarify that certain consumer charges related to tourism commission assessments (under the California Tourism Marketing Act, in the Government Code), business improvement area assessments (under the Parking and Business Improvement Area Law of 1989, in the Streets and Highways Code), and business improvement district assessments (under the Property and Business Improvement District Law of 1994, in the Streets and Highways Code) are deemed fees imposed by a government for purposes of this bill.

Government Code 13995.78. *An assessment pursuant to this chapter is a fee imposed by a government on the transaction for purposes of paragraph (29) of subdivision (a) of Section 1770 of the Civil Code.*

Streets and Highways Code 36538. *An assessment pursuant to this part is a fee imposed by a government on the transaction for purposes of paragraph (29) of subdivision (a) of Section 1770 of the Civil Code.*

Streets and Highways Code 36638. *A business assessment pursuant to this part is a fee imposed by a government on the transaction for purposes of paragraph (29) of subdivision (a) of Section 1770 of the Civil Code.*

With these amendments, the California Travel Association has agreed to take a neutral position on the bill.

12) **Remaining opposition.** Two other entities have submitted letters taking an “oppose unless amended” position on this bill. The California Association of Realtors writes:

[We] will oppose SB 478 (Dodd and Skinner) until it is amended to address our concerns. [...] While C.A.R. generally supports consumer transparency efforts and agrees with the goal of the bill, SB 478, as currently drafted, appears to inadvertently impose onerous requirements on housing providers by effectively requiring the inclusion of certain fees and charges in property advertisements that may be difficult to quantify prior to the rental application process.

Unfortunately, the Association does not specify the amendments it is seeking to resolve its concerns.

Airlines for America (A4A), a trade association for most major U.S. airlines, claims that regulation of airline fee and fares is federally preempted, and therefore seeks an amendment exempting its members from this bill. While the author and sponsor have assured Committee staff that they are aware of this issue, it is unclear why an explicit exemption in the bill is necessary. If A4A’s position is correct, any lawsuit against an airline would be quickly dismissed on preemption grounds.

ARGUMENTS IN SUPPORT: Oakland Privacy warns that if left unchecked, junk fees will only become more prevalent:

The prevalence of squeezing every penny of profit possible from consumers without providing additional value in exchange is exploitative, predatory, manipulative and anti-competitive. Without regulation to reign in out of control hidden fees or “junk fees”, the market will continue to innovate more ways to further extract from and exploit consumers. This bill will bring necessary transparency to the true price of goods and services that will help consumers make more informed choices, save money, spur true innovation and encourage a competitive marketplace.

ARGUMENTS IN OPPOSITION: The Travel Technology Association seeks a single national standard in lieu of state efforts:

Promoting transparency is a top priority for the Travel Technology Association. It is essential that travelers make informed decisions without hidden surprises or unexpected expenses. To do so, the Travel Technology Association supports a single federal standard for regulations on lodging price display. We take this position to create uniformity and certainty for lodging operators, travel technology companies, and most of all, travelers, who will have a better understanding of what is included in advertised prices for trips both in and out of their home state. Public policy that supports clear and upfront information about the total cost of travel early in the planning process and across all booking and advertising channels encourages competitive pricing practices. [...] A patchwork of varying state regulations, with different

regulations for and possible penalties on, the lodging providers and the technology platforms will translate into a significant compliance burden for the travel industry. But most importantly, it will also be a source of great confusion for consumers to know whether they are covered by their state regulations or the regulations of the state where their lodging choice is located.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Rob Bonta (co-sponsor)
California Low-Income Consumer Coalition (co-sponsor)
California District Attorneys Association
CalPIRG
Consumer Attorneys of California
Consumer Federation of California
Consumer Watchdog
Oakland Privacy

Oppose Unless Amended

Airlines for America
California Association of Realtors

Opposition

Acclamation Insurance Management Services
Affordable Housing Management Association - Pacific Southwest
Allied Managed Care
Apartment Association of Orange County
California Attractions and Parks Association
California Chamber of Commerce
Civil Justice Association of California
Coalition of Small and Disabled Veteran Businesses
East Bay Rental Housing Association
Escrow Institute of California
Expedia Group
Family Business Association of California
Flasher Barricade Association
TechNet
Travel Technology Association

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